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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,222	08/20/2003	Donald E. Weder	8403.693	7126

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EXAMINER

LUONG, SHIAN TINH NHAN

ART UNIT PAPER NUMBER

3728

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,222

Applicant(s)

WEDER, DONALD E.

Examiner

Shian T. Luong

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1,5,7-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3-4 of U.S. Patent No. 6,155,445. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both recite a wrapper material for a basket. The wrapping material has an open end and a closed end. The open end has adhesive in an interior portion thereof to secure the bag in a closed position.

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3. Claims 1,3-5,7-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4,6 of U.S. Patent No. 6,478,177.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they both recite a wrapper material for a basket. The wrapping material has an open end and a closed end. The open end has adhesive in an interior portion thereof to secure the bag in a closed position.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5-9 and 11 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Weder (US 5,111,638). Weder discloses decorative bag with color or embossed thereon in Figures 17 and 18 having an upper end, a closed lower end, an outer surface, and an opening in the upper end sized to receive the basket. The bag having a bonding material 200 thereon about the opening thereof. Bonding engagement of the bonding material with adjacently disposed portions of the decorative bag can seal the opening of the decorative bag. The bag is made out of material such as cellophane and has a thickness in the range of from less than 1.0 mil to about 2.5 mil.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 5-11 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al (US 5,551,570) in view of Weder (US 5,111,638) or Straeter (US 5,307,605) or Shore (US 4,118,890). Shaffer et al disclose a decorative wrapper for holding a basket as shown in Figures 3-5. The wrapper in Figure 3 shows one gusset between a closed bottom end and an open top end. Shaffer et al disclose all of the elements of the claims, but lacks the adhesive around the open end and the specific thickness for the wrapper. However, Weder teaches a bag for holding a basket therein. The bag has a bonding material 200 thereon about the opening thereof. Bonding engagement of the bonding material with adjacently disposed portions of the decorative bag can seal the opening of the decorative bag. The bag is made out of material such as cellophane and has a thickness in the range of from less than 1.0 mil to about 2.5 mil. Straeter teaches applying a bonding material 26,52,72 around an opening of a wrapper to seal the package in a closed position. Shore suggests providing a package for a plant with seals 22,24 on a top portion adjacent the opening to close the plant package. Therefore, it would have been obvious in view of Weder or Straeter or Shore to provide adhesive on an interior surface of a wrapper to secure the basket of Shaffer et al in the closed position.

7. Claims 2-4 and 12-13 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 1, further in view of Hummel et al (US

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4,526,565) or Whiteford (US 3,077,295). Shaffer et al as modified above disclose generally all of the limitations of the claims, but does not show gusseted portions on the sides and bottom of the wrapper. Hummer et al or Whiteford both teach the use of gusseted or pleated portions on a wrapper to allow the wrapper to freely stand on a planar surface in an expanded state. Therefore, it would have been obvious of Hummer et al or Whiteford to provide a plurality of pleated portions for the wrapper of Shaffer et al to stabilize the wrapper in an expanded state.

8. Claims 2-4 and 12-13 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 1, further in view of Hummel et al (US 4,526,565) or Whiteford (US 3,077,295). Weder discloses generally all of the limitations of the claims, but does not show gusseted portions on the sides and bottom of the wrapper. Hummer et al or Whiteford both teach the use of gusseted or pleated portions on a wrapper to allow the wrapper to freely stand on a planar surface in an expanded state. Therefore, it would have been obvious of Hummer et al or Whiteford to provide a plurality of pleated portions for the wrapper of Weder to stabilize the wrapper in an expanded state.

Conclusion

9. This is a continuation of applicant's earlier Application No. 10/226,740. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08. The **Group clerical receptionist number is (703) 308-1148** or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Donna Monroe at (703) 308-2209.

For applicant's convenience, the official FAX number is (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

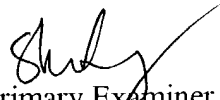
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Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (703) 308-2039. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST.

STL
April 20, 2004


Primary Examiner
Shian Luong
Art Unit 3728